

## HOUSE BILL NO. 543

INTRODUCED BY R. BROWN, BECK, CLANCY, DALE, G. FORRESTER, KASTEN, MCNUTT, MCGEE,  
D. MOOD, A. PETERSON, SLITER, WOLERY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATED TO REVIEW OF SUBDIVISIONS FOR CONFORMANCE TO LOCAL GROWTH POLICIES; ELIMINATING LOCAL GOVERNMENT AUTHORITY TO REQUIRE SUBDIVISION PLATS TO CONFORM TO GROWTH POLICIES BY ADOPTION OF AN ORDINANCE OR RESOLUTION; ~~AMENDING SECTION 76-3-604, MCA; AND REPEALING SECTION 76-1-606 UNLESS REQUIRED BY LOCAL SUBDIVISION REGULATIONS; ELIMINATING THE REQUIREMENT FOR FILING CERTIFIED COPIES OF ORDINANCES RELATED TO CONFORMANCE WITH A GROWTH POLICY; REQUIRING THAT SUBDIVISION REGULATIONS CONFORM TO BE IN ACCORDANCE WITH THE GROWTH POLICY WHEN A GROWTH POLICY HAS BEEN ADOPTED; REQUIRING A LOCAL GOVERNMENT THAT HAS ADOPTED A GROWTH POLICY TO ESTABLISH REQUIREMENTS TO IMPLEMENT APPLICABLE PROVISIONS OF THE GROWTH POLICY IN LOCAL SUBDIVISION REGULATIONS;~~ AMENDING SECTIONS 76-1-605, 76-1-606, 76-3-504, AND 76-3-604, MCA; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, section 76-1-606, MCA, allows local governments to require subdivision plats to conform to the provisions of adopted growth policies; and

WHEREAS, section 76-3-604, MCA, has been interpreted to allow local governments to deny or condition the approval of subdivision plats based on the growth policy; and

WHEREAS, many adopted growth policies contain ambiguous and subjective provisions that cannot be applied to subdivisions in an objective manner; and

WHEREAS, it is inconsistent with accepted precepts of planning to authorize a local government to enforce a growth policy without properly adopted land use controls; and

WHEREAS, the Legislature intends to clarify that growth policies ~~should not be enforced and that~~ growth policies should be implemented through the proper adoption of land use controls; and

WHEREAS, a statutory procedure is in place that allows local governments to implement growth policies through properly adopted land use controls; and

WHEREAS, this land use control adoption procedure incorporates the due process and other constitutional protections that are not included under section 76-1-606, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**SECTION 1. SECTION 76-1-605, MCA, IS AMENDED TO READ:**

**"76-1-605. Use of adopted growth policy.** After adoption of the growth policy, the city council, board of county commissioners, or other governing body within the territorial jurisdiction of the board must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

(1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

~~(3) adoption of subdivision controls; and~~

~~(4)~~(3) adoption of zoning ordinances or resolutions."

**SECTION 2. SECTION 76-1-606, MCA, IS AMENDED TO READ:**

**"76-1-606. Effect of growth policy on ~~subdivisions and plats~~ SUBDIVISION REGULATIONS.** ~~(1) When a growth policy has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats~~ REGULATIONS ADOPTED PURSUANT TO CHAPTER 3 OF THIS TITLE MUST BE MADE to conform to the provisions of IN ACCORDANCE WITH the growth policy. ~~Certified copies of the ordinance must be filed with the city or town clerk and with the county clerk and recorder of the county provided that the local subdivision regulations are amended to include substantial compliance with the specific goals and objectives of the growth policy as grounds for plat approval. The regulations must also demonstrate means by which the subdivider may show compliance with the growth policy.~~

~~—— (2) When the city council has adopted an ordinance pursuant to subsection (1), a plat involving lands within the corporate limits of the city and covered by the growth policy may not be filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the growth policy. The city council has the final authority to approve the filing of a plat within the city limits.~~

~~—— (3) When the board of county commissioners has adopted a resolution pursuant to subsection (1),~~

~~a plat involving lands outside the corporate limits of the city and covered by a growth policy may not be filed without first presenting it to the planning board, which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the growth policy. The board of county commissioners has the final authority to approve the filing of the plat.~~

~~—— (4) The planning board may delegate to its staff its responsibility to report to the city council or the board of county commissioners under subsection (2) or (3).~~

~~—— (5) This section may not be interpreted to limit the present powers of city or county governments.~~

~~—— (6) The requirements of this section must be met before any plat may be filed of record or entitled to be recorded."~~

**SECTION 3. SECTION 76-3-504, MCA, IS AMENDED TO READ:**

**"76-3-504. Minimum requirements for subdivision regulations.** The subdivision regulations adopted under this chapter must, at a minimum:

(1) except as provided in 76-3-210 or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

1 (d) the location and installation of utilities;

2 (7) provide procedures for the administration of the park and open-space requirements of this  
3 chapter;

4 (8) provide for the review of preliminary plats by affected public utilities and those agencies of  
5 local, state, and federal government having a substantial interest in a proposed subdivision. A utility or  
6 agency review may not delay the governing body's action on the plat beyond the time limits specified in  
7 this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection  
8 of the plat by the governing body.

9 (9) require the subdivider to establish ditch easements in the subdivision, in locations of  
10 appropriate topographic characteristics and sufficient width, to allow the physical placement and  
11 unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation  
12 to persons and lands legally entitled to the water under an appropriated water right or permit of an  
13 irrigation district or other private or public entity formed to provide for the use of the water right on the  
14 subdivision lots. Establishment of easements pursuant to this subsection (9) is not required if:

15 (a) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner  
16 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as  
17 irrigated land and may continue to be assessed for irrigation water delivery even though the water may  
18 not be deliverable; or

19 (b) the water rights are removed or the process has been initiated to remove the water rights from  
20 the subdivided land through an appropriate legal or administrative process and if the removal or intended  
21 removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final  
22 plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the  
23 water right and shall document that intent, when applicable, in agreements and legal documents for related  
24 sales transactions.

25 (10) require the subdivider, unless otherwise provided for under separate written agreement or filed  
26 easement, to file and record ditch easements for unobstructed use and maintenance of existing water  
27 delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the  
28 subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that  
29 are consistent with historic and legal rights.

30 (11) if the governing body has adopted a growth policy pursuant to chapter 1 of this title,

~~establish requirements to implement the provisions of the growth policy that apply to this chapter~~ BE MADE  
IN ACCORDANCE WITH THE GOALS AND OBJECTIVES ESTABLISHED IN THE GROWTH POLICY THAT ARE WITHIN THE SCOPE  
OF 76-3-501 within ~~2 years~~ 1 YEAR of adoption of the growth policy."

**Section 4.** Section 76-3-604, MCA, is amended to read:

**"76-3-604. Review of preliminary plat.** (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms ~~to the local growth policy if one has been adopted pursuant to chapter 1,~~ to the provisions of this chapter; and to rules prescribed or adopted pursuant to this chapter. ~~The governing body may not deny or impose conditions on the approval of a plat based SOLELY on a determination that the plat does not conform to the growth policy UNLESS THE LOCAL SUBDIVISION REGULATIONS INCLUDE SUBSTANTIAL COMPLIANCE WITH THE ADOPTED GROWTH POLICY AS GROUNDS FOR APPROVAL OF THE PLAT.~~

(2) The governing body shall approve, conditionally approve, or disapprove the preliminary plat within 60 working days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body disapproves or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for disapproval or enumerating the conditions that must be met to ensure approval of the final plat."

**NEW SECTION. SECTION 5. TRANSITION -- APPLICABILITY.** ~~[SECTION 3 OF THIS [THIS ACT], AMENDING 76-3-504, APPLIES TO JURISDICTIONS THAT ADOPTED A GROWTH POLICY PURSUANT TO TITLE 76, CHAPTER 1, BEFORE OCTOBER 1, 2001, BEGINNING OCTOBER 1, 2003 2002. A GOVERNING BODY THAT ADOPTS A GROWTH POLICY PURSUANT TO TITLE 76, CHAPTER 1, BEFORE OCTOBER 1, 2001, SHALL ESTABLISH REQUIREMENTS THAT CONFORM TO THE GROWTH POLICY AND THAT IMPLEMENT THE PROVISIONS OF THE GROWTH POLICY THAT APPLY TO THIS CHAPTER ON OR BEFORE OCTOBER 1, 2003.]~~

~~NEW SECTION. Section 2. Repealer. Section 76-1-606, MCA, is repealed.~~

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